



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2020-0684, FRL-9402-01-R10]

#### **Air Plan Approval; OR; Air Contaminant Discharge Permit Fee Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Oregon State Implementation Plan (SIP) submitted on November 5, 2020. The revision establishes new fees to be paid by stationary sources of air contaminants submitting notices of intent to construct. The revision also adds a new basic air contaminant discharge permit category to allow certain minor sources, that would otherwise be required to obtain a general, simple, or standard permit, the option to qualify for a basic permit.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2020-0684, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-6357 or [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we” or “our” is used, it is intended to refer to the EPA.

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### **I. Background**

#### *A. State Implementation Plan*

Each state has a State Implementation Plan (SIP) containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). Section 110 of the Clean Air Act spells out the requirements for each SIP, including but not limited to air pollution control regulations, emissions inventories, ambient air monitoring, enforcement mechanisms, and authority to revise the SIP as needed.

Revisions to the SIP are adopted by the state and submitted to the EPA for review. The EPA approves and codifies such SIP revisions as part of the Code of Federal Regulations (CFR), making them federally enforceable. The Oregon Department of Environmental Quality, as the Governor’s designee, routinely revises the SIP and submits the changes to the EPA for approval and codification in 40 CFR part 52, subpart MM.

#### *B. Air Contaminant Discharge Permits*

The Oregon air contaminant discharge permit (ACDP) program is a set of air pollution control regulations in the Oregon SIP. The ACDP program serves two SIP-related functions.<sup>1</sup> First, it governs operation of minor sources that are not subject to the major stationary source Title V operating permit program. Second, it serves as the administrative mechanism used to implement the notice of construction and pre-construction permit program, also known as the “new source review” program.

There are six types of permits in the Oregon ACDP program: Construction, General, Short-Term Activity, Basic, Simple, and Standard. Sources seeking permits must pay associated fees based on specific categories and activities codified in Oregon Administrative Rules (OAR) Chapter 340, Division 216 and approved into the Oregon SIP. Oregon has adjusted these permit fees over time to help ensure there are adequate resources to implement the ACDP program.

### *C. Source Notification Requirements*

Oregon requires stationary sources to submit notices of intent to construct for certain types of activities. These notification requirements are codified in OAR Chapter 340, Division 210 and are approved into the Oregon SIP. Type 2 notices of intent to construct generally cover existing sources with issued permits that are seeking certain minor changes to those permits. Historically, Oregon has not assessed fees to process these Type 2 notices of intent to construct.

## **II. Evaluation of Submission**

On November 5, 2020, Oregon submitted a SIP revision addressing stationary source permitting and associated fees. Oregon subsequently revised the scope of the SIP revision submitted for EPA approval in a letter dated December 22, 2021.<sup>2</sup> The SIP revision makes two

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<sup>1</sup> We note that the ACDP program serves other functions, outside of the federally approved Oregon SIP. For example, the ACDP program is the mechanism used to implement the risk-based toxics permitting program known as Cleaner Air Oregon. Because the ACDP program serves other functions, the EPA has approved the ACDP program into the Oregon SIP only to the extent it applies to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under part C of title I of the Clean Air Act (prevention of significant deterioration of air quality), but only for purposes of meeting or avoiding the requirements of part C of title I of the Clean Air Act.

<sup>2</sup> Oregon clarified that OAR 340-216-8020, which includes the specific fee amounts to be paid by sources, is not submitted for SIP approval. The letter has been placed in the docket for this action.

substantive changes. First, the SIP revision adds new fees to process Type 2 notices of intent to construct. See OAR 340-210-0230 and 0240. Second, the SIP revision adds a new Basic ACDP option, available to a qualifying minor source if that source meets certain criteria, including taking an enforceable limit on hours of operation and/or production. See OAR 340-216-0010 Table 1, Part A, number 8. This second change allows a source to obtain a Basic ACDP rather than a General, Simple, or Standard ACDP, provided the source: (1) is not a federal major source under Title I or Title V of the Clean Air Act, (2) is not subject to other source-specific SIP permitting requirements, (3) requests an enforceable limit on actual, uncontrolled emissions, and (4) control devices are not required to maintain the enforceable limit.<sup>3</sup> The enforceable limit is established in the Basic ACDP and includes associated monitoring, recordkeeping, and reporting requirements and any other elements needed to make the limit practically enforceable.

We have reviewed the submitted changes to Division 210 for continued compliance with SIP-related permit fee requirements in Clean Air Act section 110(a)(2)(L). We propose to find that the changes are designed to increase major stationary source fees paid to the permitting authority and are therefore consistent with Clean Air Act section 110(a)(2)(L). See also our most recent approval of the Oregon SIP as meeting the requirements of Clean Air Act section 110(a)(2)(L) (84 FR 26347, June 6, 2019).

We have reviewed the submitted changes to Division 216 for continued compliance with the Clean Air Act, in particular, the SIP-related minor new source review program requirements in Clean Air Act section 110(a)(2)(C) and the EPA's implementing regulations at 40 CFR 51.160 through 51.164. The EPA previously approved Oregon's minor new source review program as meeting these statutory and regulatory requirements on October 11, 2017 (82 FR 47122). We propose to find that the submitted changes to Division 216 continue to satisfy the statutory and regulatory requirements. We note that qualifying minor sources are required to apply for and

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<sup>3</sup> Functionally, this option allows certain minor sources otherwise required to obtain a General, Simple, or Standard ACDP operating permit by virtue of OAR 340-216-8010 Table 1, Part B, number 85 to obtain a Basic ACDP. See Footnote 4 to OAR 340-216-8010 Table 1, Part B, number 85.

obtain a Basic ACDP permit with enforceable limits on hours of operation and/or production, a process that includes: SIP-approved legal procedures that enable Oregon to determine, among other things, if construction of the minor source will violate applicable portions of the control strategy or interfere with attainment or maintenance of the NAAQS; public availability of information; and administrative processes. We have also reviewed the submitted changes as they relate to the EPA's guidance on federally enforceable state operating permit programs and propose to find that Oregon's ACDP program continues to comply with this guidance (54 FR 27274, June 28, 1989). See the EPA's action approving the program on January 22, 2003 (68 FR 2891).

### **III. Proposed Action**

The EPA is proposing to approve, and incorporate by reference, revisions to the Oregon SIP submitted for purposes of SIP-related permitting, as discussed in section II. of this preamble. Upon final approval, the Oregon SIP will include the following regulations, State effective September 21, 2020:

- OAR 340-210-0230, Notice of Construction and Approval of Plans: Notice to Construct;
- OAR 340-210-0240, Notice of Construction and Approval of Plans: Construction Approval; and
- OAR 340-216-8010, Table 1 – Activities and Sources.

### **IV. Incorporation by Reference**

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in section III. of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action would not apply on any Indian reservation land or in any other area in Oregon where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 7, 2022.

Michelle L. Pirzadeh,  
*Acting Regional Administrator, Region 10.*

[FR Doc. 2022-02983 Filed: 2/11/2022 8:45 am; Publication Date: 2/14/2022]